IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.12236 of 2006
MD.ZAINUL ABEDIN & ORS
Versus
STATE OF BIHAR & ANR

For the petitioner : Mr. Abdul Manan Khan, Adv.,
: Mr. Najmul Hoda, Adv.

6. 8.5.2008. This application under Section 482 Cr.P.C. has been filed for quashing of the order dated 25.1.2006 passed by Sri B. N. Mishra, Judicial Magistrate, Banka in Complaint Case No. 1926 of 2005 thereby cognizance under Section 457, 380, 323, 342, 504 of the Indian Penal Code has been taken against these petitioners.

Heard learned counsel for the petitioners.

No one appears on behalf of opposite party no. 2 in spite of valid service of notice.

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The submission of learned counsel for the petitioners is that the daughter of petitioner no. 1 namely, Bibi Sanjeeda was married with opposite party no. 2 but later on as a result of torture meted out to her by opposite party no. 2, she returned to her Naihera and a complaint case bearing no. 1368 of 2005 was filed by her against her husband and his other family members under Section 498(A)/34 of the I.P.C. as well as 3/4 of Dowry Prohibition Act in which cognizance has already been taken. The complaint case was lodged on 1.8.2005 and thereafter, after lapse of about 4 months, this complaint case has been filed by the son-in-law of petitioner no. 1 on the basis of false and baseless allegations. The subject of theft which is alleged to have been taken away by the petitioners was the properties of the daughter of petitioner no. 1. Therefore, section 380 of the I.P.C. is apparently

not applicable against these petitioners. In the facts and circumstances, the prosecution of these petitioners is out and out misuse of the process of the Court.

Considered the submission of learned counsel for the petitioners and perused the allegations leveled in the complaint petition and also the allegations leveled in the complaint petition filed by the daughter of petitioner no. 1.

Having regard to the facts and circumstances, it is quite apparent that this complaint case has been filed in retaliation of the complaint filed by the daughter of petitioner no. 1 against opposite party no. 2. It is out and out misuse of the process of the Court. Accordingly, this application is allowed. Impugned order of cognizance dated 25.1.2006 passed by Sri B. N. Mishra, Judicial Magistrate, Banka in Complaint Case No. 1926 of 2005 is, hereby, quashed.

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kanchan **(Ghanshyam Prasad, J.)**